IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.413 of 2007

The Commissioner of Income-tax
Nungambakkam High Road
Chennai - 600 034. ... Appellant

Vs.

M/s.Nippon Enterprise South
NO.46, T.T.K.Road,
Chennai - 600 018. ... Respondent.

Tax Case Appeal filed under Section 260-A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, 'B' Bench, Chennai dated 28.7.2006 and made in I.T.A.No.79/Mds/2001. against the order of CIT (a)in ITA nO.77/1999-2000 dated 30.10.2000 against this order of the Joint Commissioner of Income Tax Special RangeVII, chennai34. dated 26.3.93 and made in PAN/GIR No.AAAFN4591K.

For Appellant : Mr.T.Ravikumar

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The assessment year is 1993-94. The Revenue filed this appeal formulating the following question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the addition of Rs.23 lakhs made on account of unexplained cash credits under Section 68 of the Income-tax Act for the assessment year 1993-94?

2. The assessee is a company. In respect of the assessment year aforesaid, originally, the assessment was completed under Section 143(3) of the Income-tax Act on 29.03.1996 making addition of Rs.23 lakhs as unexplained cash credit under Section 68 of Income-tax Act. On appeal, the Commissioner of Income-tax (Appeals) set aside the order of assessment and remitted back for reassessment after giving an opportunity to the assessee to prove the transaction by producing the persons from whom the cash credit was received for examination and with further direction to the assessing officer to peruse the income-tax file of the lenders. Once again, an assessment order was made by the assessing officer rejecting all the explanations given by the assessee in respect of the disputed amount of Rs.23 lakhs. On appeal, Commissioner of Income-tax (Appeals) deleted

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the addition relying on the order of the Appellate Tribunal in assessee's own case for the assessment year 1992-93 in I.T.A.No.948/Mds/96. The further appeal preferred by the revenue to the Tribunal was also dismissed following its own order in respect of the assessee's case for the assessment year 1992-93 on which the Commissioner of Income-tax (Appeals) relied. As against the same, the present appeal is filed by formulating the question of law extracted above.

3. When the matter came up for admission before this Court, this Court has adjourned the matter for more than four times so as to enable the counsel for the revenue to find out whether the revenue has taken any further action against the order of the Tribunal in respect of the assessment year 1992-93, which is followed by the Tribunal for dismissing the appeal of the revenue? However, the counsel was able to get only a letter from the Department to the effect that the file relating to the said assessment year has been handed over to the counsel for the revenue for filing an appeal before this Court. Thereafter what happened to the matter is still a mystery. Hence, we heard the learned counsel for the revenue on merits of the case for admission.

4. Learned counsel appearing for the revenue has strenuously contended that even in the second round, the assessing officer after considering the explanation offered by the respondent/assessee, rejected the same on the ground that the explanation offered was not to his satisfaction. When that being the position, the appellate authority would not have interfered with the finding. Hence, the order of the Appellate Tribunal has to be set aside and the order of the assessing officer has to be restored.

5. We heard the argument of the learned counsel for the revenue and perused the material on record.

6. Section 68 of the Income-tax Act reads as follows:

"Cash Credits: Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

7. From the reading of the above statutory provision, it is clear that in order to invoke the said provision, there must be credit of amounts in the books maintained by the assessee for the previous year and for that credit, the assessee offers no explanation about the nature and source of the credit found in the books or the explanation offered by the assessee in the opinion of the assessing officer is not satisfactory. Only if these conditions are available, then only Section 68 could be invoked to charge the credit to income-tax, as the income of the assessee of that previous year. The expression employed in that provision that "the assessee offers no explanation" would mean that the assessee offered no proper or reasonable or acceptable explanation as regards the sum found credited in the books maintained by the assessee or in the alternate, if the assessee offered explanation, which in the opinion of the assessment

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officer, is not satisfactory, even then, the sum so credited may be charged to income-tax, as income of the assessee for that previous year. However, the opinion of the assessing officer for not accepting the explanation offered by the assessee as not satisfactory, is required to be based on proper appreciation of material evidence and other attending circumstances available on record and is required to be formed objectively.

8. No doubt, in this case, it is true that some of the summons issued to the parties, the addresses of whom were furnished by the assessee were returned unserved with the postal marking "not known", "left", "no such person" etc. But other vital explanations offered by the assessee are available. It is the concrete case of the assessee that he obtained the cash credits from one finance broker Bharat Kumar P.Shah, who arranged the loan from 31 parties on 4.1.1993. The names and addresses of the parties, the amount of loan and quarterly interests to be paid are all given by the said finance broker. For arrangement of the above said loan, the assessee paid commission in a sum of Rs.40,500/- and Rs.28,500/-, Rs.69,000/- on 15.7.1993 by Cheque. The loans were repaid by account payee cheques issued on Hongkong & Shanghai Banking Corporation, Chennai – 1. It is also on record that pursuant to the letter issued by the assessign officer, the assessee made the finance broker Bharat Kumar P.Shah to appear before the assessing officer and as a matter of fact, Bharat Kumar P.Shah appeared before the assessing officer and gave a statement that he only arranged the loan from 31 parties for Rs.23 lakhs. He further agreed to produce the parties before the assessing officer, however failed to do so. When the assessing officer requaired the assessee to produce the parties, the assessee replied that the loans were arranged by the finance broker and the assessee was not aware of the parties. The books of accounts were maintained as per the particulars given by Bharat Kumar P.Shah about the names, addresses and the amount of loan and the interest payable.

9. When this sort of explanation has been given by the assessee, we cannot accept the reasoning given by the assessing officer that the assessee should produce all the 31 persons, whose names have been given by Bharat Kumar P.Shah, a finance broker, to whom alone the assessee had contact. In addition to that, the assessee had also stated in their letter dated 19.3.1999 that the Income-tax Department details of the persons concerned has also been furnished to the assessing officer. This vital information has also not been accepted by the assessing officer.

10. In the remittal order, the Commissioner of Income-tax not only directed the assessing officer to give one more opportunity to the respondent to prove his case, but also directed the assessing officer to peruse the income-tax files of the lenders.

11. From the above facts, it is clear that the assessee made available the lender of the assessee Bharat Kumar P.Shah before the assessing officer and the assessing officer also obtained statement from him accepting the transaction. The assessee has also informed the income tax details of the lenders to the assessing officer. This explanation offered by the assessee cannot be regarded as an improper, unreasonable

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and unacceptable explanation. Further, the opinion formed by the assessing officer is also not appears to be based on objective reasoning with reference to the material available on record and attended circumstances of the case.

12. The learned counsel for the revenue sought to rely on the decision of the Supreme Court in the case of COMMISSIONER OF INCOME-TAX VS. P.MOHANAKALA ((2007) 291 ITR 278) is in favour of the Department. We have gone through the judgment. The Supreme Court has observed in that case that the opinion of the assessing officer for not accepting the explanation offered by the assessee as not satisfactory was required to be based on proper appreciation of evidence and such opinion was required to be formed objectively with reference to the material available on record. The application of mind is the sine qua non for forming the opinion. In the said judgment, the Supreme Court has taken into consideration the judgments of SUMATI DAYAL VS. COMMISSIONER OF INCOME-TAX ((1995) 214 ITR 801 (SC)), K.S.KANNAN KUNHI ((1969) 72 ITR 757 (KERALA) and other earlier judgments on this point. If the above observation of the Supreme Court is matched with the facts of the present case, we are of the view that the assessing officer rejected the explanation offered by the assessee for the sake of rejection and the opinion so formed by the assessing officer is not based on proper appreciation of evidence, material and other attendant circumstances available in this case. The Supreme Court observed in 291 ITR 278 that even the rejection of the explanation offered by the assessees as unacceptable by itself cannot be a reason for making the addition.

13. Appeal under Section 260-A can be entertained only on a question of law. Apart from that, we are of the view that in this case no question of law, much less a substantial question of law has arisen for consideration. The entire argument of the learned counsel appearing for the revenue is on the appreciation of evidence, which is totally outside the domain of this Court under Section 260-A of the Income-tax Act.

14. For all the fore-going reasons, we are of the view that there is no clinching material available in favour of the Department so as to maintain the appeal, in the sense, there is no question of law, much less, a substantial question of law is available in this case for entertaining the appeal. The appeal is therefore dismissed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,Chennai.

2. The Joint Commissioner of
Income-tax, Special Range-VII
Chennai - 34.

3. The Commissioner of Income Tax
(Appeals) - XIII, Chennai

4. The Commissioner of Income Tax,
Nungambakkam High Road,
Chennai.34.

+ 1 cc to Mr.N.Muralikumaran Advocate SR.NO.53706

LA(CO)
RD 12.9.07

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